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Docket No.: 181-046

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT OPERATIONS

In re Application of:

Peter J. Dronzek, Jr. Group Art Unit: 1794

Serial No.: 10/587,126 Examiner: John L. Goff II

Filed: July 21, 2006

For: TECHNIQUES FOR LABELING OF PLASTIC, GLASS OR METAL CONTAINERS OR
SURFACES WITH POLYMERIC LABELS EMPLOYING AN ACTIVATED HYDROPHILIC ADHESIVE

New York, NY 10020
February 23, 2012

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

This is an appeal from the final rejection
of all of the claims that was mailed September 3,
2009.

(i) *Real party in interest.* The real party in
interest is Process Resources Corp.

(ii) *Related appeals and interferences.* There are no
related appeals or interferences.

(iii) *Status of claims.* Claims 1, 2, 5, 6, 8, 9, and 11 are
the subject of this appeal. Claims 3, 4, 7 and 12 have been
canceled and claims 14-17 have withdrawn.

(iv) *Status of amendments.* There are no unentered amendments and no amendment has been filed after the final rejection.

(v) *Summary of claimed subject matter.*

Claims 1, 11 and 18 are the independent claims.

Claim 1 is directed to a process for applying a polyethylene or polypropylene polymeric label to a particular surface, i.e., a glass, metal or plastic container or surface and has four principal steps. The first step involves the application of a layer of a hydrophilic solid material having 30% by dry weight of an animal glue to the polyethylene or polypropylene label and thereafter drying the layer to form a water activatable hydrophilic layer. The second step involves the application of water containing a cross-linking agent to the activatable hydrophilic layer to form a tacky fastenable label which is followed by the third step of fastening the tacky label to a surface. The fourth step involves curing the label on the surface.

The subject matter of claim 1 was disclosed in original claim 1 and in the specification at page 10, line 22 to page 11, line 25 and Examples 1-20.

Claim 11 is directed to a process for making a polyethylene or polypropylene polymeric label stock that is suitable for labeling a glass, plastic or metal container or surface. The claimed process consists of applying a layer of an hydrophilic solid material comprising at least 30% by dry weight of an animal glue based on the total weight of the hydrophilic solid material by applying a aqueous dispersion of animal glue

containing a cross-linking agent to a polyethylene or polypropylene polymeric label stock and thereafter drying said layer of hydrophilic material.

Claim 11 is based on original claim 11 and the specification at page 13, lines 19-37 and page 49, lines 12-17.

Claim 18 is directed to a four step process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface. The process consists of applying a layer of a hydrophilic solid material based on at least 30% of an animal glue to a polyethylene or polypropylene polymeric label followed by a drying step. A sufficient amount of a water based adhesive that has a cross-linking agent is applied to the activatable hydrophilic layer to form a tacky fastenable polyethylene or polypropylene polymeric label which is fastened and cured on glass, plastic or metal surface or container.

Claim 1 differs from claim 18 in that claim 1 involves the application of water containing a cross-linking agent and claim 18 requires the application of a water based adhesive containing a cross-linking agent.

The subject matter of claim 18 is disclosed in original claim 1 and in the specification at page 11, lines 5-25 and in Example 17.

(vi) Grounds of rejection to be reviewed on appeal.

1. The rejection of claims 1, 5, 6, 8, 9 and 11 under 35

U.S.C. §103(a) as being unpatentable over Mallik in view of Heise et al. (Heise).

2. The rejection of claims 10, 11, 13 and 18 under 35 U.S.C. §103(a) as being unpatentable over Mallik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 and further in view of Dronzek (U.S. 2001/0035265).

3. The rejection of claim 11 under 35 U.S.C. §103(a) as being unpatentable over Mallik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 and further in view of Leiner et al. (Leiner).

4. The rejection of claim 13 under 35 U.S.C. §103(a) as being unpatentable over Mallik, Heise and Leiner further in view of Dronzek (U.S. 2001/0035265).

5. The rejection of claims 1, 2, 5, 6, 8, 9 and 11 under 35 U.S.C. 103(a) as being unpatentable over Squier, Mallik and Heise.

6. The rejection of claims 10, 11, 13 and 18 under 35 U.S.C. 103(a) as being unpatentable over Squier in view of Mallik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 in view of Dronzek (U.S. 2001/0035265).

7. The rejection of claim 11 under 35 U.S.C. §103(a) as being unpatentable over Squier, Malik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 and further in view of Leiner.

8. The rejection of claim 13 under 35 U.S.C. §103(a) as being unpatentable over Squier, Mallik, Heise and

Leiner as applied to claim 11 further in view of Dronzek (U.S. 2001/0035265).

9. The rejection of claims, 1, 2, 5, 6, 8-11 and 18 for obviousness double patenting over the claims of U.S. 7,090,740.

10. The rejection of claim 18 for double patenting over the for obviousness double patenting over the claims of U.S. 7,090,740, Heise, Mallik or Squier as applied to claims 1, 2, 5, 6, 8-11 and 13 further in view of Dronzek.

(vii) Argument.

Claims 1, 2, 5, 6, 8, 9 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mallik in view of Heise et al. (Heise).

Reconsideration is requested.

The claims recite that the label is a polyethylene or polypropylene polymeric label. Claims 1, 2, 5, 6, 8, 9 and 11 avoid the Mallik reference which only discloses the use of polymers other than polyethylene and polypropylene where such other polymers have a MVTR of more than 100gm/m²/24h/mil. The plastics comparison chart published by the Alpha Packaging Company which shows that the polylactide used by Mallik has an MVTR of 18-22 g-mil/100in²/24h and polyethylene and polypropylene have an MVTR of 0.5 g-mil/100in²/24h which is approximately equivalent to 7.8 100gm/m²/24h/mil. The use of polyethylene and polypropylene is not made obvious by the Mallik patent which requires a minimum MVTR of 100g/m²/24h.

Mallik is further distinguished by the fact that it is only concerned with a wet applied adhesive system as illustrated at paragraph [0022] where wet cold glue is applied to a glass surface and then a polymer film is applied to the wet cold glue on the surface of the glass. Claim 1 provides for applying the animal glue to a polyethylene or polypropylene film label stock and then drying the glue. Claim 1 also specifies that when the label is to be applied to a surface, the dried animal glue on the label surface is contacted with water containing a cross-linker. The wet label is applied to a surface. The concept of applying the cross-linker to the dried animal hide glue is not disclosed by Mallik.

Heise is concerned with an animal glue that contains both an alkaline salt and glyoxal that is used on paper and not on a polymer. This reference does not mention polyethylene or polypropylene or any other polymer and therefore there is no reason to combine this reference with Mallik. At page 7, line 27 et seq., the present applicant pointed out the problem which arise when a polymeric label is applied to a glass, plastic or metal surface using a water based adhesive. This problem arise because the impermeable nature of both the label and the substrate to which the label is applied makes it difficult to "dry" the water basaed adhgesive because the water has no where to migrate but at the edges of the label. This results in delayed drying and the "swimming" of the label which resulted in distorted labeling which is commercially unacceptable. The problem solved by the present application does not exist when a paper label is applied to a glass, plastic or metal surface because the paper allows for the migration of water through the paper which results in rapid drying and as a result the labels do not "swim" on the surface of the container. This problem is well know to those who are skilled in the art and is the reason why the prior art regarding the application of paper labels does not make the present invention obvious.

The rejection of claims 10, 11, 13 and 18 under 35 U.S.C. §103(a) as being unpatentable over Mallik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 and further in view of Dronzek (U.S. 2001/0035265) is in error because the cited references do not make obvious the use of a cross linked animal glue for making label stock for application to glass, plastic or metal containers or surfaces.

Dronzek was cited for the teaching of a slip agent as pointed out in claim 10 which depends from claim 1. Although Dronzek suggests the use of a skip agent in a different process, Dronzek does not mention an animal glue containing a cross-linking agent.

Claims 11 and 18 do not recite the use of slip agent. Claim 11 is directed to a process for making a polyethylene or polypropylene polymeric label stock that is suitable for labeling a glass, plastic or metal container or surface. The claimed process consists of applying a layer of an hydrophilic solid material comprising at least 30% by dry weight of an animal glue based on the total weight of the hydrophilic solid material by applying a aqueous dispersion of animal glue containing a cross-linking agent to a polyethylene or polypropylene polymeric label stock and thereafter drying said layer of hydrophilic material.

Claim 13 depends from claim 11 and it points out the use of a slip agent in making stock labels. This is not suggested by Mallik or Heise. For these reasons, this ground of rejection should be reversed.

Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Mallik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 and further in view of Leiner et al. (Leiner).

As noted above, Mallik is concerned with the use of polymers other than polyethylene and polypropylene and Heise is concerned with paper labels. There is nothing in Leiner that relates to the use of an animal glue on a polymeric label that

would lead a skilled artisan to use animal glue in the methods taught by Mallik and Heise. claims of the Dronzek patent. For these reasons, this ground of rejection should be reversed.

Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Mallik, Heise and Leiner further in view of Dronzek (U.S. 2001/0035265).

As noted above, Mallik only mentions the use of polymers other than polyethylene and polypropylene and Heise is concerned with paper labels. Nothing in Leiner relates to the use of an animal glue on a polymeric label that would lead a skilled artisan to use cross linked animal glue in the methods taught by Mallik and Heise. Dronzek does not mention cross linked animal glue. In the absence of any suggestion to use a crosslinked animal glue to make a polypropylene or polyethylene label for use on a glass, plastic or metal surface, the cited references fail to make the invention claimed in claim 13 obvious. For these reasons, this ground of rejection should be reversed.

Claims 1, 2, 5, 6, 8, 9 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Squier et al. (Squier) in view of Malik and Heise.

Squier describes the application of a cavitated thermoplastic label with cold glue. There is no mention of the use of cross linked animal glue in Squier or in Mallik or Heise for applying a polyethylene or polypropylene label to a glass, platic or metal surface. For these reasons, this ground of rejection should be reversed.

Claims 10, 11, 13 and 18 were under 35 U.S.C. 103(a) as

being unpatentable over Squier in view of Mallik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 in view of Dronzek (U.S. 2001/0035265). Each of the cited references has been distinguished above. The fact that no reference discloses or suggests the use of a cross linked animal glue for the application of a polyethylene or polypropylene label to a glass, plastic or metal surface is evidence of unobviousness. For these reasons, this ground of rejection should be reversed.

Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Squier, Malik and Heise as applied to claims 1, 2, 5, 6, 8, 9 and 11 and further in view of Leiner. Each of the cited references has been distinguished above. The fact that no reference discloses or suggests the use of a cross linked animal glue for the application of a polyethylene or polypropylene label to a glass, plastic or metal surface is evidence of unobviousness. For these reasons, this ground of rejection should be reversed.

Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Squier, Mallik, Heise and Leiner as applied to claim 11 further in view of Dronzek (U.S. 2001/0035265). Each of the cited references has been distinguished above. The fact that no reference discloses or suggests the use of a cross linked animal glue for the application of a polyethylene or polypropylene label to a glass, plastic or metal surface is evidence of unobviousness.

Claims 1, 2, 5, 6, 8-11 and 18 were rejected for obviousness double patenting over the claims of U.S. 7,090,740. This rejection is in error because the claims of U.S. 7,090,740 do not disclose the use of a cross-linked animal based glue and without such a teaching the present claims are

not obvious over the claims of U.S. 7,090,740. For these reasons, this ground of rejection should be reversed.

Claim 18 was rejected for double patenting over the for obviousness double patenting over the claims of U.S. 7,090,740, Heise, Mallik or Squier as applied to claims 1, 2, 5, 6, 8-11 and 13 further in view of Dronzek. The claims of U.S. 7,090,740 do not disclose or suggest that a cross-linked animal glue could be used for fastening a polypropylene or polyethylene label to a glass, plastic or metal surface. The secondary references have been distinguished above from the use of a cross linked animal glue for fastening a polyethylene or polypropylene label to a glass, plastic or metal container. For these reasons, this ground of rejection should be reversed.

Respectfully submitted,



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(viii) Appendix

Claims

1. A process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface said process consisting of:

- (a) applying a layer of a hydrophilic solid material comprising at least 30% by dry weight of an animal glue based on the total weight of the hydrophilic solid material to said polyethylene or polypropylene polymeric label and thereafter drying said layer of hydrophilic material to form a water activatable hydrophilic layer that can be activated into a tacky fastenable adhesive;
- (b) applying a sufficient amount of water containing a cross-linking agent to said activatable hydrophilic layer to form a tacky fastenable polyethylene or polypropylene polymeric label;
- (c) fastening said tacky fastenable polymeric label to a glass, plastic or metal container or surface; and
- (d) curing said polyethylene or polypropylene polymeric label on said glass, plastic or metal surface or container.

2. A process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface as defined in claim 1 wherein the hydrophilic solid material is 90 percent by weight animal glue.

3. A process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface as defined in claim 1 wherein step (b) is carried out with the application of a sufficient amount of water containing an effective amount of a crosslinking agent to said activatable layer to form a tacky fastenable polyethylene or polypropylene polymeric label.

6. (previously presented): A process for applying a polyethylene or polypropylene polymeric label to a glass container or surface as defined in claim 1 wherein step (b) is carried out with the application of a sufficient amount of water containing an effective amount of a

crosslinking agent to said activatable layer to form a tacky fastenable polyethylene or polypropylene polymeric label.

8. A process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface as defined in claim 1 wherein step (b) is carried out with the application of a sufficient amount of water based activator containing a effective amount of a cross-linking agent to said activatable layer to form a tacky fastenable polyethylene or polypropylene polymeric label.

9. A process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface as defined in claim 1 wherein the total amount of dried hydrophilic material is from 0.02 g to 0.7 g of dried hydrophilic material per sq. cm. of polyethylene or polypropylene polymer label material.

10. A process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface as defined in claim 1 where a slip agent is added to said hydrophilic material.

11. A process for making a polyethylene or polypropylene polymeric label stock for application to a glass, plastic or metal container or surface said process consisting of the steps of
(a) applying a layer of an hydrophilic solid material comprising at least 30% by dry weight of an animal glue based on the total weight of the hydrophilic solid material by applying a aqueous dispersion of animal glue containing a cross-linking agent to a polyethylene or polypropylene polymeric label stock and thereafter drying said layer of hydrophilic material.

13. A process for making a polyethylene or polypropylene polymeric label stock for application to a glass, plastic or metal container or surface as defined in claim 11 wherein said aqueous dispersion of animal glue contains a cross-linking agent and an slip agent.

18. A process for applying a polyethylene or polypropylene polymeric label to a glass, plastic or metal container or surface said process

consisting of:

- (a) applying a layer of a hydrophilic solid material comprising at least 30% by dry weight of an animal glue based on the total weight of the hydrophilic solid material to said polyethylene or polypropylene polymeric label and thereafter drying said layer of hydrophilic material to form a water activatable hydrophilic layer that can be activated into a tacky fastenable adhesive;
- (b) applying a sufficient amount of a water based adhesive containing a cross-linking agent to said activatable hydrophilic layer to form a tacky fastenable polyethylene or polypropylene polymeric label;
- (c) fastening said tacky fastenable polymeric label to a glass, plastic or metal container or surface; and
- (d) curing said polyethylene or polypropylene polymeric label on said glass, plastic or metal surface or container.

(ix) Evidence appendix.

The plastics comparison chart published by the Alpha Packaging Company which is of record in the present application.

(x) Related proceedings.

There are no related proceedings